

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

Southern

District of

New York

MARY SMITH, as Adminsitrator of the Estate of
Terrence Smith and MARY SMITH, individually

SUMMONS IN A CIVIL ACTION

V.

UNITED STATES OF AMERICA, YOUNG SIK
KHO, M.D. and DINESH GARG, M.D.

CASE NUMBER:

08 CV 3836

JUDGE KOELTL

TO: (Name and address of Defendant)

United States of America, c/o U.S. Attorney's Office - Michael J. Garcia,
United States Attorney - Southern District of New York, One St. Andrews
Plaza, New York, N.Y., 10007; Young Sik Kho, M.D. and Dinesh K. Garg,
M.D, both c/o Bronx V.A. Medical Center, 130 West Kingsbridge Road,
Bronx, New York 10468

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Queller, Fisher, Dienst, Serrins, Washor & Kool, LLP
233 Broadway, Suite 1800
New York, New York 10279

an answer to the complaint which is served on you with this summons, within twenty (20) days after service
of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you
for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the
Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

(By) DEPUTY CLERK

APR 23 2008

DATE

JUDGE KOELL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

08 CV 3836

MARY SMITH, as Administrator of the Estate of Terrence
Smith, and MARY SMITH, individually,

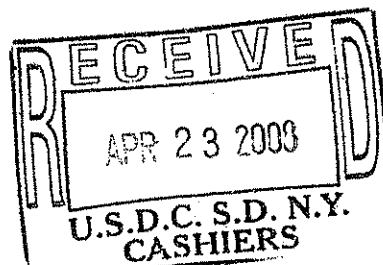
Plaintiff,

-against-

UNITED STATES OF AMERICA, YOUNG SIK KHO, M.D.
and DINESH K. GARG, M.D.

Defendant.

VERIFIED COMPLAINT
AND JURY DEMAND



PLAINTIFF, by and through her attorneys, QUELLER, FISHER, DIENST, SERRINS,
WASHOR & KOOL, LLP complaining of the defendants, as and for her VERIFIED
COMPLAINT respectfully shows to the Court and alleges upon information and belief as
follows:

FIRST CAUSE OF ACTION

1. This is an action arising under the Federal Tort Claims Act and this Court is vested with jurisdiction pursuant to 28 U.S.C. Section 1346 (b).
2. Plaintiff resides at 3225 Parkside Place, Bronx, New York which is within the Southern District of the State of New York.
3. The acts and/or omissions herein complained of occurred within the Southern District of the State of New York.
4. On December 28, 2006, Letters of Administration were issued to MARY SMITH, as Administrator of the Estate of TERRENCE SMITH, now deceased by the Surrogate's Court, Bronx County and said Letters continue in full force and effect.
5. Plaintiff timely notified defendants of this claim, by filing a Claim with the

Department of Veterans Affairs, Office of Regional Counsel and said Claim was denied by letter dated October 29, 2007 by said office.

6. On February 21, 2006, decedent TERRENCE SMITH, died survived by next-of-kin who suffered pecuniary loss.

7. Defendant, UNITED STATES OF AMERICA, owns and operates a healthcare facility known as the BRONX V.A. MEDICAL CENTER, located in Bronx County, New York.

8. The decedent, TERRENCE SMITH, was treated at the BRONX V.A. MEDICAL CENTER at various times prior to November 29, 2002 and subsequent thereto through February, 2006.

9. On November 29, 2002 a chest x-ray was taken at the BRONX V.A. MEDICAL CENTER of the decedent, TERRENCE SMITH.

10. The November 29, 2002 chest x-ray was negligently interpreted by one or more employees of the BRONX V.A. MEDICAL CENTER.

11. The November 29, 2002 chest x-ray was negligently interpreted by one or more employees of the UNITED STATES OF AMERICA.

12. In November, 2002, the defendant, YOUNG SIK KHO, M.D., was a physician duly licensed to practice medicine in the State of New York.

13. In November, 2002, the defendant, YOUNG SIK KHO, M.D., was a physician specializing in the field of radiology.

14. In November, 2002, the defendant, YOUNG SIK KHO, M.D., was an employee of the defendant, UNITED STATES OF AMERICA.

15. In November, 2002, the defendant, YOUNG SIK KHO, M.D., was an employee of BRONX V.A. MEDICAL CENTER.

16. The defendant, YOUNG SIK KHO, M.D., negligently interpreted an x-ray

regarding the decedent in November, 2002.

17. At various times prior and subsequent to November 29, 2002, the defendant, YOUNG SIK KHO, M.D., undertook to and did render medical care, treatment and services to the decedent.

18. All of the medical care, treatment and services rendered to the decedent by the defendant, YOUNG SIK KHO, M.D. were rendered by said defendant while acting within the course and scope of his employment with the defendant, UNITED STATES OF AMERICA.

19. All of the medical care, treatment and services rendered to the decedent by the defendant, YOUNG SIK KHO, M.D. were rendered by said defendant while acting within the course and scope of his employment with, BRONX V.A. MEDICAL CENTER.

20. In November, 2002, the defendant, DINESH K. GARG, M.D., was a physician duly licensed to practice medicine in the State of New York.

21. In November, 2002, the defendant, DINESH K. GARG, M.D., was a physician specializing in the field of internal medicine.

22. In November, 2002, the defendant, DINESH K. GARG, M.D., was an employee of the UNITED STATES OF AMERICA.

23. In November, 2002, the defendant, DINESH K. GARG, M.D., was an employee of BRONX V.A. MEDICAL CENTER.

24. On November 29, 2002, the defendant DINESH K. GARG, M.D., rendered medical treatment to the decedent.

25. At various times prior and subsequent to November 29, 2002, the defendant, DINESH K. GARG, M.D., undertook to and rendered medical care, treatment and services to the decedent.

26. All of the medical care, treatment and services rendered to the decedent by the

defendant, DINESH K. GARG, M.D., were rendered by said defendant, while acting within the course and scope of his employment with the defendant, UNITED STATES OF AMERICA.

27. All of the medical care, treatment and services rendered to the decedent by the defendant, DINESH K. GARG, M.D., were rendered by said defendant, while acting within the course and scope of his employment with BRONX V.A. MEDICAL CENTER.

28. In May, 2005, the decedent was diagnosed with lung cancer by physicians at the BRONX V.A. MEDICAL CENTER.

29. Defendants and each of them, their agents, servants, employees and those persons who rendered services to the decedent, on behalf of, at, jointly with or under the supervision of these defendants were negligent and careless in the rendering of said services and departed from good and accepted medical practice in the rendering of said services, resulting in injury and damage to the decedent.

30. By reason of the carelessness, negligence and medical malpractice of the defendants and each of them, the decedent was caused to suffer severe and sustain severe and serious physical, emotional and mental injuries and economic damage prior to his death.

31. By reason of all of the foregoing, plaintiff, MARY SMITH, as Administrator of the Estate of TERRENCE SMITH has been injured and damaged in the sum of TEN MILLION (10,000,000.00) DOLLARS.

SECOND CAUSE OF ACTION

32. Plaintiff repeats, reiterates and realleges each of the allegations in the preceding Cause of Action.

33. At all of the times herein mentioned, the defendants, their agents, servants, employees, staff and those persons who rendered services on behalf of, at, jointly with or under the supervision of these defendants failed to adequately inform the decedent or anyone acting on his behalf and to warn of the nature, purpose, risks, benefits and/or possible complications and

known perils of the treatment rendered, proposed to be rendered and/or intentionally omitted, nor did said defendants, or any of them, inform the decedent of any alternative methods of treatment, nor did said defendants, or any of them, obtain an informed consent by or on behalf of the decedent regarding the treatment rendered, proposed to be rendered and/or intentionally omitted and a reasonable person being properly informed would not have consented.

34. As a result of all of the foregoing, decedent was caused to suffer and sustain severe and serious physical, mental and emotional injury and damage and to experience conscious pain and suffering prior to his death.

35. As a result of all of the foregoing, plaintiff, MARY SMITH, as Administrator of the Estate of Terrence Smith has been injured and damaged in the sum of TEN MILLION (10,000,000.00) DOLLARS.

THIRD CAUSE OF ACTION

36. TERRENCE SMITH died on February 21, 2006 as a result of the negligence, carelessness and medical malpractice of the defendants, and each of them as aforesaid and the failure to obtain an informed consent as aforesaid.

37. As a result of all of the foregoing, plaintiff, MARY SMITH, as Administrator of the Estate of TERRENCE SMITH, now deceased, has been injured and damaged in the sum of TEN MILLION (10,000,000.00) DOLLARS.

FOURTH CAUSE OF ACTION

38. Plaintiff repeats, reiterates and realleges each of the allegations in the preceding Cause of Action.

39. At all of the times herein mentioned, plaintiff, MARY SMITH, was the duly wedded wife of the deceased, TERRENCE SMITH.

40. At all of the times herein mentioned, plaintiff, MARY SMITH was entitled to the

love, attention, support and affection of the decedent prior to his death.

41. As a result of all of the foregoing, plaintiff, MARY SMITH, was deprived of the love, attention, support and affection of the decedent, prior to the death of the decedent.

42. As a result of all of the foregoing, plaintiff, MARY SMITH, individually has been injured and damaged in the sum of ONE MILLION (1,000,000.00) DOLLARS.

WHEREFORE, plaintiff, MARY SMITH, as Administrator of the Estate of TERRENCE SMITH, now deceased, demands judgment against the defendants, and each of them, in the sum of TEN MILLION (10,000,000.00) DOLLARS as to the First and Second Causes of Action alleged herein, together with the costs and disbursements of this action and plaintiff, MARY SMITH, as Administrator of the Estate of TERRENCE SMITH, now deceased, demands judgment against the defendants and each of them, in the sum of TEN MILLION (10,000,000.00) DOLLARS as to the Third Cause of Action alleged herein, with interest from and after the decedent's death, together with costs and disbursements of this action and plaintiff, MARY SMITH, individually, demands judgment against the defendants and each of them in the sum of ONE MILLION (1,000,000.00) DOLLARS as to the Fourth Cause of Action alleged herein, all with interest with interest from and after the decedent's death, together with costs and disbursements.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES.

Dated: New York, New York
April 22, 2008

Yours, etc.,



STEPHEN JENKINS, ESQ.

(SJ7849)

QUELLER, FISHER, DIENST,
SERRINS, WASHOR & KOOL, LLP
Attorneys for Plaintiff
233 Broadway, 18th Floor
New York, New York 10279
(212) 406-1700

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MARY SMITH, as Administrator of the Estate of Terrence
Smith, and MARY SMITH, individually,

Plaintiff,

CERTIFICATE OF MERIT

-against-

UNITED STATES OF AMERICA, YOUNG SIK KHO, M.D.
and DINESH K. GARG, M.D.


Defendant.
-----X

STEPHEN JENKINS, an attorney duly admitted to practice before this Court, and an associate of
QUELLER, FISHER, DIENST, SERRINS, WASHOR & KOOL, LLP, attorneys for Plaintiff, affirms
the following to be true under penalties of perjury:

I certify that this office has reviewed the facts of this case and that a consultation was had with a
physician who it is reasonably believed to be knowledgeable in the relevant issues involved in this action,
and that I have concluded, on the basis of such review and consultation, that there is a reasonable basis for
the commencement of this action.

Dated: New York, New York
April 22, 2008

Yours, etc.,


STEPHEN JENKINS, ESQ.
(SJ7849)
QUELLER, FISHER, DIENST,
SERRINS, WASHOR & KOOL, LLP
Attorneys for Plaintiff
233 Broadway, 18th Floor
New York, New York 10279
(212) 406-1700

ATTORNEY'S VERIFICATION

STEPHEN JENKINS, an attorney duly admitted to practice before this Court affirms the following to be true under the penalties of perjury:

I am an associate of the firm, QUELLER, FISHER, DIENST, SERRINS, WASHOR & KOOL, LLP, attorneys of record for the claimant herein.

That the foregoing COMPLAINT is true to the knowledge of the affirmant, except as to those matters therein stated to be alleged upon information and belief and that as to those matters, I believe them to be true.

The grounds as to matters stated upon information and belief are the results of the investigations and information received while acting as an attorney.

Affirmant further states that the reason this Verification is made by affirmant and not the plaintiff is that the plaintiff is not within the County of New York, where affirmant maintains his office.

Dated: New York, New York
April 22, 2008


STEPHEN JENKINS, ESQ.
(SJ7849)

QUELLER, FISHER, DIENST,
SERRINS, WASHOR & KOOL, LLP
Attorneys for Plaintiff
233 Broadway, 18th Floor
New York, New York 10279
(212) 406-1700

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARY SMITH, as Administrator of the Estate of TERRENCE SMITH and MARY SMITH,
individually,

Plaintiff(s),

-against-

UNITED STATES OF AMERICA, YOUNG SIK KHO, M.D. and DINESH K. GARG., M.D.

Defendant(s).

VERIFIED COMPLAINT AND JURY DEMAND

QUELLER, FISHER, DIENST, SERRINS, WASHOR & KOOL, LLP.

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